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LAW IN THE SECULAR STATE

By

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According to the thesis of Maine, forms of law are related to the stages of social development Early tribal society was based on the bonds of religion and kinship As with Greek Themistes the king or priest claimed to obtain divine rulings and in due course monopolised knowledge of the rules sanctified by divine command But the priestly monopoly was broken after the rise of political authority. The rules became more widely accessible, and secular officers were appointed to enforce their observance For the first time secular persons learned in law, *viz*, the jurist class, appeared The transition to the territorial state therefore signalised the increase of authority of Government, differentiation of law from ethical conduct and religion, and the displacement of priestly interpreters of law by the secular juri-consults In this process the human mind was liberated from the shackle of religious doctrine, the authoritarian dogmas concerning the sanctity of law were refuted, and reason was enthroned as the authentic source of legal rules All these developments connote a supremely important movement in the history of human thought

In the modern secular state therefore law and religion have severed their original connection We no longer claim divine sanction for legislative enactments; the Judges no longer declare that their decisions are divinely inspired The concern of law is with external behaviour, with acts and forbearances and their consequences The sanctions of law are secular, legal rules do not presume to deal with the things of the spirit In the modern secular state all religious denominations are necessarily treated alike All persons are permitted freedom of conscience and the right to profess, practice and propagate their particular religious tenets

But a secular state does not mean that laws should be dissociated from ethical standards Nor is it the function of such a state to obliterate the difference between the several religious systems and to reduce them to a dead uniform level In India, for instance, the Hindu and Muslim communities have derived a precious heritage from their past in their legal traditions The common fund of national wisdom and experience has doubtless been enriched from the individuality of their experiment No fruitful attempt can be made to unify the two domestic systems, for the cleavage between them is due to a difference in social outlook, historical tradition and religious sentiment

In truth law is something more than a mere secular code of conduct It is not as totalitarian states claim a mere instrument of executive action or a weapon to achieve the policy of the state At the other pole, we must reject the extreme doctrine that law is pure logical deduction from self-evident rules or that law is wholly derived from abstract principles apprehended *a priori* Law is a growth, not a fabric, it is part of the complex of a people's character and experience In the pageant of history law represents a people's general development, being during

its youth rich in forms and symbols but poor in abstract thought While the balance shifts with growing maturity, the law continues to draw its colour and substance from the deep current of social life Law is as much a part of national inheritance as religion or language ; it cannot be cast and re-cast by professional jurists and statesmen according to their view of what is reasonable "Law is the organ of folk right ; it moves and grows like every other expression of the life of the people ; it is formed by custom and popular feeling, through the operation of silent forces and not by the arbitrary will of a Legislature " (Savigny.) It is manifest that law operates not on individuals in the abstract but on individuals in a particular society at a particular moment of time Its authority is subject in the long run to the people's acquiescence and to the continuity of social experience. Rules not related to that experience might have the formal marks of law but they would lack its essence

In the progress of Indian legal thought characteristic emphasis has been laid on Dharma as the basis of validity of all laws Rules of conduct embodied in the Dharma had to be implicitly obeyed There was common subjection to the unifying force of Dharma due to the fear that violation of rule would entail wrath of God But the rational idea also emerges that Dharma is authoritative since it conduces to social welfare (*lokasangraha*) Law was intended to promote Dharma or righteousness, which in turn was conducive to secure *moksha*. The purpose of the state was to enable all men to live in peace and happiness, to follow their customs and usages (*svadharma*). Kautilya says at the very threshold of his work "Therefore the king should not allow people to swerve from or fail in their Dharma ; for whoever holds fast by his Dharma will be happy in this world and the next"

The Taittiriya Samhita remarks "धर्मो विश्वस्य जगतः प्रतिष्ठा" Dharma is so called because it sustains the universe

In the Raja Dharma Prakaran of the Santi Parva the following statement is made :

प्रभवार्थाय भूतानां धर्मप्रवचनं कृतम् । अध्याय १०९
यः स्यात्प्रभवसंयुक्तः स धर्म इति निश्चयः ॥ (१०)
धारणाद्धर्ममित्याहुः धर्मे विधृताः प्रजाः ।
यः स्याद्धारणसंयुक्तः स धर्म इति निश्चयः ॥ (११)
अहिंसार्थाय भूतानां धर्मप्रवचनं कृतम् ।
यः स्यादहिंसासंयुक्तः स धर्म इति निश्चयः ॥ (१२)

"Righteousness was declared for the advancement and growth of all creatures. Therefore that which leads to advancement and growth is Righteousness Righteousness is so-called because it upholds all creatures Therefore that is Righteousness which is capable of upholding all creatures Righteousness was declared for restraining creatures from injuring one another. Therefore that is Righteousness which prevents injury to creatures"

The conception of Dharma is the counter-part of the older idea of *rta* which in Rig Veda denotes the Supreme cosmic order by which the universe and even the Gods are governed and which is intimately connected with sacrifice "*Rta* is at once the organised principle of the universe and the divine ordering of earthly life, as the former it regulates the conception of the sun and moon, of day and night and embodies the unchangeable principle that pervades the succession of *phenomena ;* as the latter it is affiliated with purpose and human benefit and is exemplified in the flow of the rivers which fertilise the fields, in the cattle useful to men, in the institutions of marriage of the monarchical state, of the patriarchal

home " (Berolzheimer.) *Rta* originally manifested itself in the path of the heavenly bodies and that right path on which the gods brought light out of the darkness became afterwards the path to be followed by man, partly in his sacrifices, partly in his general moral conduct

Mitra and Varuna are declared to be " lovers and cherishers of the law " They are invoked as " lords of the shining light " to protect men not only from their enemies but from the forces of nature " The winds waft sweets ; the rivers pour sweets for the men who keep the law ; so may the plants be sweet for us. Sweet be the night and sweet the dawns, sweet the terrestrial atmosphere , sweet be our father Heaven to us " (Rig Veda, Book I, Hymn 90)

In the Brahadaranyaka Upanishad there occurs an important passage (IV 14) which describes how Dharma was created " He created still further the excellent law (Dharma) Law is the *Kshatra* (power) of the *Kshatra*, therefore there is nothing higher than the law Thenceforth even a weak man rules a stronger with the help of the law, as with the help of a king Thus the law is what is called the true And if a man declares what is true, they say he declares the law ; and if he declares the law, they say he declares what is true Thus both are the same "

In modern jurisprudence, the term " right-duty " covers several legal relations each with its distinct characteristics Right and duties are correlatives and one cannot have a right without a corresponding duty or a duty without a corresponding right Every right or duty therefore involves a *vinculum juris* by which two or more persons are bound together In Hindu legal theory Dharma is a higher law which the king himself is bound to respect and enforce Such a conception necessarily led to emphasis being shifted on duty rather than of right, upon obligation to society rather on privilege The Smritis hold that every deviation from Dharma if brought to the notice of King will be appropriately punished by him The problem is not whether plaintiff's right having been violated he should have a remedy or not. Rather the problem is whether defendant having failed in his duty he should not be compelled to fulfil that duty.

It is manifest that according to Hindu jurists Dharma or sacred law contains its sanction within itself The king is not superior to it but subject to it It is the duty of the king to obey the law himself and to enforce its obedience in others to the specified extent The king was not autocratic but he was the servant of the community " the first servant of the state " Sumati for the first time attributed kingship to divine origin. He stated that the king was deity made by Gods out of their own portions The Naradasmriti completely supports this theory of Divine Right " It is Indra himself who moves about on earth as king , people can nowhere live after transgressing his orders "

According to the author of the Milindapanho, " the king is one who rules and guides the world ; predominating over all other men, making his relatives rejoice and his enemies mourn, he raises aloft the sun-shade of sovereignty , he is held worthy of respect by the multitude of persons who approach him and come into his presence , when pleased with a strenuous servant, he gladdens his heart by bestowing gifts ; he censures, finds and executes the man who transgresses his commands ; proclaiming the right and the wrong principles according to instructions laid down in succession by righteous kings of old, and ruling in righteousness (dhammena), he becomes dear to his people.

Aryasura enumerates the duties of the king and solemnly advises the king " Betake yourself to Dharma " He also lays down that the king must make Righteousness the guide of his actions and must direct his mind to securing the salvation of his subjects The description of Suddhodana, given by Asvaghosha also represents him as illuminating his people on every side, showing them the paths they were to follow (Buddha Charita, Book I, 9-11)

Therefore the theory of Divine Right is not absolute The divinity of the king is constantly associated with his duty to preserve the Dharma In the Coronation Oath the king had to promise with faith that he would make the country

prosperous, look upon it as God and undertake to abide by all laws dictated by ethics

प्रतिज्ञांश्चाधिरोहस्व मनसा कर्मणा गिरा ।
पालयिष्याम्यहं भौमं ब्रह्म इत्येव चासकृत् ॥
यश्चात्र धर्म इत्युक्तो दण्डनीतिव्यपाश्रयः ।
तमशङ्कः करिष्यामि स्ववशो न कदाचन ॥

(Santiparvan, LVIII, 115, 116).

It is important to state that according to Manu the king who harasses his subjects loses his life, family and kingdom (VII, 111-112 of Mahabharata) The Anusasanaparva solemnly permits the killing of a king in certain circumstances. "The people should take courage and kill a cruel king who does not protect his subjects, who extracts taxes, merely robs them of their wealth and who gives no lead Such a king is kali (evil and strife) incarnate" (Anusasana Parva 1, 32-33).

In the ultimate analysis the basis of law is ethical Its object is the higher well-being of individuals, its purpose is the promotion of a noble life Law is the force and tendency which makes for righteousness It has been justly said that the spiritual nature of man is stronger than codes or constitutions No Government can endure which does not recognise that for its foundation, and no legislation last which does not flow from this fountain "Of law there can be no less acknowledged than that her seat is in the bosom of God; her voice the harmony of the world All things in heaven and on earth do her homage, the very least as feeling her care and the greatest as not exempting her power—all things whatsoever, though each in a different sort and manner admiring her as the mother of their peace and joy" (Richard Hooker)

SUMMARY OF ENGLISH CASES

British Motor Trade Association v Salvadore, (1949) 1 All E R 208 (Ch D)

Tort—Conspiracy—Procuring breach of contract by covenentor—Liability—Damages—Quantum

The plaintiffs were a certified trade union (an association of which all British Motor Car manufacturers and all their authorised distributors and dealers were members) It was provided that cars should be sold at the list price only When a member dealer sold a car the purchaser had to sign a covenant not to resell the car for period of one year But a ring operating in the market set up ostensible purchasers who immediately resold to another independent trader who sold the car to members of the public at very high prices In an action for damages and injunction,

Held, the maintenance of fixed prices and the covenant system as an integral feature of that policy is a trade interest which the plaintiffs are entitled to protect against interference

The plaintiffs are entitled to damages which will include the expenses incurred in investigating the various operations by the ring As the tort of conspiracy had been proved an injunction can be granted to restrain the defendants and each of them by themselves or their agents or servants or otherwise from buying or facilitating the dealing with cars offered by a person or by the agent of a person known by them to have executed a covenant not to resell and to contemplate breaking such a covenant.

STONE *v* BOLTON, (1949) 1 All E R 237

Tort—Playing of cricket—Ball hitting and injuring person on the highway adjoining

The playing of cricket is not a non-natural use of land and a cricket club is not liable for injury caused by a ball hitting a person on the highway in the absence of negligence It did not constitute a nuisance either

Where the cricket ground was in constant use before the construction of the highway those using the highway are subject to such obstructions and dangers as existed at the time of the dedication of the land for a highway.

R. *v* KINGSTON-UPON-HULL RENT TRIBUNAL, (1949) 1 All E R 260 (K B D).

Certiorari—Costs—Tribunal whose order is sought to be quashed appearing by counsel and contesting application for issue of writ—If can be ordered to pay costs

Where in an application by a landlord for quashing the order of a rent tribunal the tribunal appears by counsel and contests the application, the landlord ought to be given costs and an order for costs can be made against the tribunal

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RUSE *v* READ, (1949) 1 All E R 398 (K B D)

Larceny—Drunken person taking a bicycle without any intention of depriving its owner of it—Subsequent misappropriation—Offence

The accused while in a drunken condition took another's cycle and rode about on it After he became sober he did not know what to do and he consigned the bicycle to another station "to be collected" He never had any intention of collecting it

In the circumstances, *Held*, the original taking of the bicycle being wrongful, the subsequent misappropriation of the machine amounted to larceny.

JONES *v* BELLEGROVE PROPERTIES, LTD , (1949) 1 All E R 498 (K B D)

Limitation—Acknowledgment of debt—Debtor company's balance sheet showing lump amount as due to creditors—Such sheet handed to a shareholder creditor at the meeting—Oral evidence to show that the shareholder's debt was included in the amount—Sufficient acknowledgment

A shareholder of a company lent some amount to the company At the annual general meeting, the shareholder was handed by a director the accounts including balance sheets for 6 years in each of which was the entry "Sundry creditors £ 7,638-8-10"

Held, oral evidence to show that the amount included the debt due to the shareholder, was admissible and thus explained it was an acknowledgment which can save limitation for the debt

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CROCKER HORLOCK, LTD *v* LANG & CO , LTD , (1949) 1 All E R 526 (K B D).

Agency—Contract for commission on "all orders" and "all repeats"—If entitles agent to commission on repeats after termination of agency

A provision in a commission agency arrangement for payment of commission on all orders received direct or indirect and all repeats entitles the agent to commission during the contract period and not after its termination The question in such a case must be one of construction of the relevant documents.

ANDERSON *v* THE GUINNESS TRUST, (1949) 1 All.E R 530 (K B D)

Tort—Owner of block of flats with common court-yard—Wife of one of the tenants of one of the blocks tripping over irregularity in surface of court-yard and getting injured—Landlord if liable for damages

The plaintiff was the wife of the tenant of one of a block of flats owned by the defendants While crossing a common court-yard she tripped over an irregularity in the surface and was injured. In an action for damages,

Held, the plaintiff was not an invitee of the landlord but merely a licensee and as the irregularity of the surface was open and apparent there was nothing like a concealed danger for which the landlord could be made liable.

GEORGE *v* TOMPSON'S TRUSTEE, (1949) 1 All E R 554 (Ch D)

Bankruptcy Act (1914), *section* 40 (2)—*Attachment of debt due to debtor by a creditor —When prevails against trustee in bankruptcy*

A judgment creditor of the debtor having attached a debt due to the debtor does not become entitled to retain it unless he has actually received the debt before the bankruptcy of the debtor. The test is not whether there had been a garnishee order absolute or not, but whether the garnishee proceedings had resulted in actual payment before the receiving order The fact that some administrative breakdown delayed the actual payment is of no avail

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BILLINGHAM *v* HUGHES, (1949) 1 All E R 684 (C A).

Tort—Negligence—Injury to plaintiff—Damages—Loss of future earnings—Assessment —Income-tax to which it will be liable if can be deducted

In assessing damages for loss of future earnings of a person incapacitated by injury caused by defendant's negligence the defendant cannot claim that the income-tax on such earnings should be taken into consideration in assessing the damages The damages must be computed on the gross future earnings

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ROYAL CROWN DERBY PORCELAIN CO , LTD , *v* RUSSELL, (1949) 1 All E R. 749 (C A).

Statute—Interpretation—Re-enactment adopting interpretation of a provision by Court of appeal—Power of Court of appeal to overrule its earlier decision

It cannot be said that, whenever Parliament re-enacts a provision of a statute it thereby gives statutory authority to every erroneous interpretation which has been put upon it The true view is that the Court will be slow to overrule a previous decision on the interpretation of a statute when it has long been acted on, and it will be more than usually slow to do so when Parliament has, since the decision, re-enacted the statute in the same terms, but if a decision is, in fact, shown to be erroneous, there is no rule of law which prevents the Court of appeal from overruling its earlier decision.

WHITESIDE *v* WHITESIDE, (1949) 1 All.E R 755 (Ch D).

Deed—Rectification—Merely to secure reduction of tax payable by party to deed—No relief required as between the parties—Discretion of Court to refuse rectification.

Where an agreement has been made which both parties intended and it has turned out to have a different legal effect from that which was anticipated it is no ground for rectification. Where the covenantee has already received all that she is entitled to and the covenantor has not failed in any way to pay it, there is no

relief which the parties require Where what is sought is only a side wind to help the plaintiff against the Revenue, the Court ought not to exercise its discretionary remedy of rectification

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CLARKE v. GRANT, (1949) 1 All E R 768 (C A)

Landlord and tenant—Notice to quit—Effect—Acceptance of rent after termination of tenancy by the notice—If waiver of notice

If a proper notice to quit has been given in respect of a periodic tenancy, such as a yearly tenancy, the effect of the notice is to bring the tenancy to an end just as effectually as if there had been a term which had expired. The tenancy having been brought to an end by a notice to quit, a payment of rent after the termination of the tenancy would only operate in favour of the tenant if it could be shown that the parties intended that there should be a new tenancy The mere mistake of the landlord's agent in accepting money as rent which had accrued is no evidence that the landlord was agreeing to a new tenancy.

(1920) 2 K B 161, overruled and (1920) 3 K B 428, approved.

JACOBS AND ANOTHER v LONDON COUNTY COUNCIL, (1949) 1 All E R 790 (C A).

Tort—Negligence—Landlord retaining forecourt of shop let out to tenant—Customer visiting shop injured by projection in the Courtyard—Landlord if liable for damages.

A customer visiting a shop using the forecourt (retained by the landlord who has let out the shop to a tenant) is not an invitee of the landlord but only a licensee and cannot claim from the landlord damages for injuries caused by reason of a projecting stop cock in the forecourt It cannot be said that the customer met with the accident in the course of the user of the highway so as to make the occupier of the forecourt liable on the ground of nuisance

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MCCARTHY v DAILY MIRROR, LTD, (1949) 1 All E R 801 (C A)

Factories Act, 1937—Section 43 (1)—Necessity to provide suitable and adequate accommodation for employee's clothing—Clothes left on pegs stolen—Liability of employers

Section 43 (1) of the Factories Act, 1937, required the employers to provide and maintain for the use of the employees adequate and suitable accommodation for clothing not worn during working hours Though lockers were provided for many of the workers some were given only pegs to hang their clothes and there was a theft of some clothes The owners of the clothes claimed damages from the employers for breach of duty to maintain suitable accommodation for the clothes as required by section 43 (1) of the Factories Act

Held, the risk of theft was an element which had to be taken into consideration whether the accommodation provided was suitable. It is essentially a question of fact to be dealt with by the tribunal of fact in a common sense way, taking a broad view of all the circumstances In some cases there may be a risk of theft by an outsider, in others there may be a risk of theft by persons inside the factory What is suitable may depend on the number of employees or the access which some employees from other departments have to the different departments in the building

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R v. DOLMAN, (1949) 1 All E R. 813.

Crimes—Bigamy—Guilty knowledge—Necessity—Belief that first wife was already married and her marriage with accused invalid—If good defence.

Though the statute itself does not say that a man shall not " knowingly " or " unlawfully " go through a form of marriage it has for many years been held that a man does not commit the criminal offence of bigamy unless he realises that he

is commiting that offence. Where the accused honestly believed and had reasonable cause for believing that his first marriage was void (the wife being already married) and so he was free to enter into the marriage which is alleged to be bigamous, that affords a good defence to the accused

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CAMINER *v.* LONDON INVESTMENT TRUSTS, (1949) 1 All.E R 874 (C A)

Tort—Occupier of land adjoining road—Tree on land falling on plaintiffs' motor car driving along the road and injuring the plaintiffs and the car—Occupier of land when liable.

An occupier of property owes a duty to neighbours and users of a highway alongside his premises It is a duty to exercise that care which the circumstances demand—in other words, to act as a reasonably careful man would act Where a 130 years old elm tree on the defendants' property fell on plaintiffs' car driving along the road and caused injury to the plaintiffs and the car, the defendants cannot be made liable, where there was no outward sign of the root disease because of which the tree fell. To make the owner of the tree liable, the danger must be apparent to the layman so as to make him take the precaution of calling in expert advice In the absence of evidence of apparent disease, or that the tree was unduly old, or that it had an unsually large top, the occupier of the property cannot be made liable.

(1948) 2 All E R 110 reversed

PYRAH *v* DONCASTER CORPORATION, (1949) 1 All E R 883 (C A)

Workmen's compensation—Accident—Nurse in Tuberculosis hospital exposed to Tuberculosis germs—Right to compensation

Where a nurse in a Tuberculosis hospital who had been brought into unusually close contact with tubercular patients and subject to constant attack of the germs, her infection with Tuberculosis will be an injury by accident entitling her to compensation under section 1 of the Workmen's Compensation Act

Per *Bucknill L J dissenting* —The disease of the nurse cannot be said to be the result of a series of ascertained or ascertainable accidents It was the result of a gradual process of breathing air containing noxious bacilli and it cannot be said to be an accident.

R *v* DUFFY, (1949) 1 All E.R 932 (C A)

Criminal trial—Murder—Provocation—Essentials of—Proper direction to jury

The following charge to the jury on the question of provocation in defence to a charge of murder was approved by the Court of appeal —" Provocation is some act, or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self control, rendering the accused so subject to passion as to make him or her for the moment not master of his or her mind Let me distinguish for you some of the things which provocation in law is not Circumstances which merely predispose to a violent act are not enough Severe nervous exasperation or a long course of conduct causing suffering and anxiety are not by themselves sufficient to constitute provocation in law Indeed the further removed an incident is from the crime, the less it counts A long course of cruel conduct may be more blameworthy than a sudden act provoking retaliation, but you are not concerned with blame here—the blame attaching to the dead man You are not standing in Judgment on him. He has not been heard in this Court. He cannot now be ever heard He has no defender here to argue for him It does not matter how cruel he was, how much or how little he was to blame, except in so far as it resulted in the final act of the accused What matters is whether the accused

had time to say "Whatever I have suffered, whatever I have endured, I know that Thou shalt not kill". Similarly circumstances which induce a desire for revenge are inconsistent with provocation since the conscious formulation of a desire for revenge means that a person has had time to think, to reflect, and that would negative a sudden temporary loss of self control which is the essence of provocation. Provocation being therefore as I have defined it, there are two things in considering it, to which the law attaches great importance. The first of them is whether there was what is sometimes called time for cooling that is, for passion to cool and for reason to regain dominion over the mind. That is why most acts of provocation are cases of sudden quarrels, sudden blows inflicted with an implement already in the hand, perhaps being used, or being picked up, where there has been no time for reflection. Secondly, in considering whether provocation has or has not been made out, you must consider the retaliation in provocation—that is to say whether the mode of resentment bears some proper and reasonable relationship to the sort of provocation that has been given. Fist might be answered with fists, but not with a deadly weapon and that is a factor you have to bear in mind when you are considering the question of provocation.

FAIRMAN *v* FAIRMAN, (1949) 1 All E R 938 (P D A)

Husband and wife—Charge of adultery against wife—Proof—Evidence of a person that he had habitually committed adultery with the woman—Need for corroboration as it must be treated as accomplice's evidence.

Where the only evidence of adultery charged against a wife was that of a man with whom it was alleged that the wife had committed adultery, his evidence must be treated as that of an accomplice and cannot be accepted or acted upon unless it was corroborated by other evidence as adultery is a *quasi* criminal offence.

MALLETT *v* DUNN, (1949) 1 All E R 973 (K B)

Tort—Negligence—Damages—Injury caused to plaintiff's wife by being knocked down by defendant's car—Wife's contributory negligence—Effect on husband's right to special damages for medical and household expenses.

Plaintiff's wife was knocked down and injured by the defendant's car while walking along a lane. In an action by the wife for general damages and the husband for special damages in respect of medical and household expenses it was found that the wife had been also at fault and the responsibility for damages was apportioned as to three-fourth to the defendant and as to one-fourth to the wife thus reducing £ 1,600 to £ 1,200 for general damages for personal injuries.

But the husband's claim for special damages is not defeated by the fact that his wife was guilty of wrong doing which was also a cause of the injury to her as a consequence of which he has suffered damage. The husband's cause of action is unaffected by the contributory negligence of the wife, and he can recover his damages in full.

VICTORIA LAUNDRY (WINDSOR) LTD *v* NEWMAN INDUSTRIES, LTD, (1949) 1 All E R 997 (C A)

Contract—Sale—Delay in delivery of chattel sold—Damages—Loss of profits which could have been made by buyer—When can be included in the damages recoverable—Remoteness of damages.

The plaintiffs who owned a laundry contracted to buy from defendants a boiler and the defendants engaged a third party to dismantle and load the boiler on plaintiff's transport. The boiler was damaged while being dismantled and the

boiler was not delivered till a few weeks beyond the time stipulated In a claim for damages including the loss of profits which the plaintiffs could have made by using the boiler,

Held, as on the facts the defendants had means of knowledge that some loss was likely to result they were liable to the plaintiffs for such loss (The rule as to remoteness of damages discussed)

JAMES BIBBY LTD *v* WOOD, (1949) 2 All E R 1 (K B D)

Solicitor's lien—Nature and extent of—Garnishee order against his client—Effect

A solicitor's lien is of two-fold character He has a lien on the papers of his clients which are in his possession, and he can refuse to give up those papers so long as his costs are not paid With regard to a sum of money which comes into existence owing to his professional exertions, the term "lien" is really a misnomer. Although it is always referred to as a lien, it is not strictly and accurately a lien, because it has not got the characteristics of a lien It is merely a right to go to the Court and ask the Court to charge the property in favour of the solicitor, and, until that is done, the solicitor has no right to the money Where the solicitor takes no steps to obtain a charging order on the amount realised the solicitor's so called lien is not perfected and cannot prevail over the rights of a person in whose favour a garnishee order has been made

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READING'S PETITION OF RIGHT, *Re*, (1949) 2 All E R 68 (C A)

Master and Servant—Sergeant in army receiving bribe and escorting civilian lorry loaded with cases with unknown contents without being inspected by civil authorities—Right of the crown to amounts so received

A sergeant in the army stationed in Cairo on several occasions, while in uniform, boarded a private lorry and escorted it through Cairo, thus enabling it to pass the civilian police without being inspected The lorry was loaded with cases the contents of which were unknown On each occasion the sergeant received a large amount which the military authorities later took possession

Held, the Crown was entitled to the amounts When a servant or agent by a breach of duty damnifies his master or principal the latter can, of course recover in an ordinary action for breach of contract for any loss he has actually suffered, but there is a well established class of cases in which he can so recover whether or not he has suffered any detriment in fact These are cases in which the servant or agent has realised a secret profit, commission or bribe in the course of his employment and the amount recoverable is a sum equal to such profit

(1948) 2 All E R 27, affirmed